

APPEAL NO. 051251
FILED JULY 27, 2005

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 3, 2005. The hearing officer determined that the compensable injury of _____, extends to and includes the diagnosis of depression and myelomalacia and that the appellant/cross-respondent (claimant) is not entitled to supplemental income benefits (SIBs) for the third, fourth and fifth quarters.

The claimant appeals the hearing officer's determination on SIBs contending that he met the requirement to make a good faith effort to obtain employment commensurate with his ability to work by proving a total inability to work in any capacity. The respondent/cross-appellant (carrier) appeals the hearing officer's determinations on the extent of injury contending that there was insufficient evidence to establish that the claimed conditions of myelomalacia and depression were related to the compensable injury. The claimant filed a response to the carrier's appeal urging affirmance on the extent-of-injury issues. The file does not contain a response from the carrier to the claimant's appeal. After the appeals and response were filed, the parties submitted a Benefit Dispute Agreement (TWCC-24) approved by a Benefit Review Officer (BRO) on July 18, 2005, which resolved the SIBs issues for the third, fourth, fifth, sixth and seventh quarter.

DECISION

Affirmed in part as reformed and reversed and a new decision rendered in part.

The parties stipulated that the claimant sustained a compensable injury to his neck and low back on _____. It is undisputed that the claimant had two cervical surgeries, one on July 25, 2001, and the other on October 1, 2001. Both surgeries were performed by (Dr. P), the treating doctor. A designated doctor certified the claimant at maximum medical improvement on March 25, 2002, with a 33% impairment rating wherein he rated the cervical, lumbar and thoracic spine.

EXTENT OF INJURY

The carrier contends that the claimed conditions of depression and myelomalacia have not been proven to be causally related to the compensable injury. Dr. P had referred the claimant to (Dr. M), a pain management specialist, who in a report of a December 22, 2004, visit had an impression (among other matters) of "Significant depression" and recommended the claimant "be seen by psychiatry for further evaluation." Dr. P, in a report dated December 3, 2004, commented that the claimant "has a very serious injury to the spinal cord and he has, what we call, myelomalacia of the spinal cord . . . [the claimant] has pain secondary to his neck injury and his disc problem." There is no medical evidence to the contrary. The Appeals Panel has

frequently noted that the hearing officer is the sole judge of the weight and credibility to be given to the evidence and that this is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer's determinations on the extent of the injury are sufficiently supported by the evidence and are affirmed.

SIBs

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). At issue in this case is whether the claimant met the good faith criteria of Section 408.142(a)(4) and Rule 130.102(b)(2). The claimant attempted to meet this criteria by meeting the requirements of Rule 130.102(d)(4), which provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. The hearing officer determined that there were other records that showed that the claimant was able to return to work and that the claimant was therefore not entitled to SIBs for the third, fourth and fifth quarters. As previously noted, subsequent to the hearing officer's decision, and after the appeals and response were filed, the parties entered into a TWCC-24 agreement whereby the parties agreed that the claimant is entitled to SIBs for the third quarter but is not entitled to SIBs for the fourth, fifth, sixth and seventh quarters.

Rule 147.7 is entitled "Effect on Previously Entered Decisions and Orders" and in subsection (a) provides:

- (a) A written agreement on one or more disputed issues addressed in a presiding officer's decision or order, including an interlocutory order, sets aside the decision or order, as it relates to the agreement, on the date the agreement is approved by the presiding officer.

In this case the agreement was approved by a BRO on July 18, 2005, and the agreement addressed the third, fourth and fifth quarters of SIBs, which the hearing officer addressed in his decision and order. Because the written agreement, as it relates to the third, fourth and fifth quarters, sets aside the hearing officer's decision, in order to conform to the agreement we reverse the hearing officer's determination that the claimant is not entitled to SIBs for the third quarter and render a new decision that pursuant to the TWCC-24 agreement the claimant is entitled to SIBs for the third quarter. Pursuant to the TWCC-24 agreement the claimant continues to be not entitled to SIBs for the fourth and fifth quarters of SIBs at issue in this appeal.

As previously noted the parties stipulated that the date of the compensable injury was _____, a date supported by Texas Workers' Compensation Commission

records. However the hearing officer in the first line of the Background Information section, the last sentence of the second to last paragraph on page 3, Finding of Fact 5, Conclusions of Law 3 and 4 and in two places in the Decision portion of the Decision and Order recites that the compensable injury is (alleged date of injury). We regard those dates to be clerical errors and reform those references to be _____.

The true corporate name of the insurance carrier is **TEXAS BUILDERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBERT C. SIDDON'S
11612 RM 2244 (BEE CAVES ROAD) BUILDING 1, SUITE 200
AUSTIN, TEXAS 78738.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge